IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.541 OF 2005
IN
SUMMARY SUIT NO.3393 OF 2002

Insotherm Glass Systems ..Plaintiffs

Vs.

Steel Strips & Tubes Ltd. & Ors. ..Defendants

Mr.B.B.Saraf with Ms.Nita Solanki i/b M/s.Kiran Jain & Co. for the plaintiffs

Ms.Deepti Nazarath i/b Thakore & Jariwala for the defendant no.1

Mr.S.Ardeshir i/b Gagrat & Co. for the defendant no.2 and 3

CORAM : S.U.KAMDAR, J
DATED : 13TH FEBRUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.5,03,532/- arising out of goods sold and delivered. Plaintiffs have relied upon invoices which is at Ex.A and B to the plaint and delivery receipts which are issued to the defendants. Defendant no.1 has also made part payments in respect of the aforesaid supplies of sum of Rs.10.0 lacs by two cheques of Rs.5 lacs,

each both dt.5.6.00. Plaintiffs have also sued defendant no.2 and 3 as according to the plaintiffs, defendant no.2 and 3 are also jointly and severally liable to make payment of aforesaid amount.

2. It is the case of defendant no.1 that though it is true that gods are sold and delivered by plaintiff to defendant no.1 but under the contract between defendant no.2 and 3 it is defendant no.2 who is liable to make payment and not defendant no.1.

3. It is the case of defendant no.1 that under the contract which was entrusted to defendant no.2, a lumpsum amount of Rs.1,25,00,000/- was fixed and all the supplies were to be effected and paid for by the defendant no.2. In that light of the matter, the learned counsel for defendant no.1 has contended that defendant no.1 is not liable to make payment of the aforesaid amount. It has been further contended that there is no privity of contract because Purchase Order is not placed by defendant no.1 and letter dt.2.12.99 is infact

issued by the employee of defendant no.2 and not by defendant no.1.

4. In my opinion, there is no defence whatsoever in so far as defendant no.1 is concerned. There is no dispute that goods are supplied to the project of defendant no.1. Invoices and delivery challans has been issued to defendant no.1. Part payment has been made by defendant no.1. Merely because letter has been issued by the employee of defendant no.2 seeking arrangement to supply the said glass urgently, do not make prima facie defendant no.2 liable to make payment of the aforesaid claim. Furthermore, reliance is placed by the defendant no.2 on the minutes dated dt.24.1.00 under which it has been recorded that defendant no.1 would make payment of Rs.10 lacs to the plaintiffs only on behalf of defendant no.2. In my opinion, the said minutes do not bind the plaintiffs. It is between defendant no.1 and 2 and admittedly the same is not even communicated to the plaintiffs before the supply of the goods. In that light of the matter, there is no defence on the part of defendant no.1. However,

with a view to give an opportunity to defendant no.1 to defend the suit I direct defendant no.1 to deposit in court a sum of Rs.5.0 lacs within 4 weeks failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes as against defendant no.1. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

5. In so far as defendant no.2 and 3 are concerned, there is no document to show that there is any contract between defendant no.2 and 3 and the plaintiffs. In that light of the matter, there is a bonafide defence raised by defendant no.2 and

3 that they are not liable to pay suit claim. Thus, defendant no.2 and 3 are granted unconditional leave to defend. Summons for Judgment is dismissed accordingly. Suit is transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.